Fashion Rama Knitwear, Ltd. *and* United Production Workers, Local 17-18. Case 29–CA–19788

November 12, 1996

DECISION AND ORDER

BY MEMBERS BROWNING, FOX, AND HIGGINS

Upon a charge filed by the Union on February 14, 1996, the General Counsel of the National Labor Relations Board issued a complaint on March 28, 1996, against the Company (the Respondent), alleging that it has violated Section 8(a)(5) and (1) of the National Labor Relations Act. Although properly served copies of the charge and complaint, the Respondent has failed to file a sufficient answer.

On May 7, 1996, the General Counsel filed a Motion for Summary Judgment. On May 9, 1996, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. The Respondent filed no response. The allegations in the motion are therefore undisputed.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

Sections 102.20 and 102.21 of the Board's Rules and Regulations provide that the allegations in the complaint shall be deemed admitted if an answer is not filed within 14 days from service of the complaint, unless good cause is shown. In addition, Section 102.20 provides that the Respondent shall specifically admit, deny, or explain each of the facts alleged in the complaint, unless the Respondent is without knowledge, in which case the Respondent shall so state, such statement operating as a denial. Any allegations in the complaint not specifically denied or explained in an answer, unless the Respondent shall state in the answer that it is without knowledge, are deemed to be admitted to be true, unless good cause is shown.

The undisputed allegations in the Motion for Summary Judgment disclose that the Region, by letter dated April 17, 1996, notified the Respondent that unless an answer was received by April 26, 1996, a Motion for Summary Judgment would be filed. On May 1, 1996, the Regional Office received a response from the Respondent dated April 25, 1996, which stated, ''Please be advised that the charges by U.P.W. Local 17-18 are not correct.'' The response is not a sufficient answer because it does not specifically admit, deny, or explain each of the facts alleged in the complaint, nor does the Respondent assert that it is without knowledge.[1]

In the absence of good cause being shown for failure to file a sufficient answer, we grant the General Counsel's Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

The Respondent, a New York corporation, is engaged in the manufacture of garments at its facilities in Brooklyn and New Windsor, New York, where it annually purchased and received at its New York facilities goods valued in excess of $50,000 directly from enterprises located inside the State of New York, each of which in turn purchased the goods directly from firms located outside the State of New York. We find that the Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

The Respondent has been an employer-member of the Tri-State Commercial Association, an organization composed of various employers engaged in the garment manufacturing industry. The Association represents its employer-members in negotiating and administering the collective-bargaining agreement with the Union. The Respondent has authorized the Association to represent it in negotiating and administering the collective-bargaining agreement with the Union.

The following employees constitute a unit appropriate for the purposes of Section 9(b) of the Act:

> All production, maintenance, shipping and delivery employees employed by members of the Association, including the Respondent, but excluding all office clerical employees, guards, professional employees and supervisors as defined in the Act.

Since at least 1994 and at all material times, the Union, by virtue of Section 9(a) of the Act, has been the designated exclusive collective-bargaining representative of the Respondent's employees in the unit. This recognition has been embodied in successive collective-bargaining agreements, the most recent of which (the agreement) is effective by its terms from April 1, 1994, through March 31, 1997.

On approximately December 5, 1995, the Union requested that the Respondent bargain collectively concerning the effects on unit employees of its closing of its Brooklyn, New York facility. In December 1995, on a date unknown, the Respondent closed its Brooklyn facility. On approximately February 8, 1996, the

[1] *American Gem Sprinkler Co.*, 316 NLRB 102 (1995).

Union again requested that the Respondent bargain collectively concerning the effects on unit employees of the closing of its Brooklyn facility. The Respondent, beginning December 5, 1995, has failed and refused to bargain collectively concerning the effects on unit employees of the closing of the Brooklyn facility. The Union's requests to bargain were related to the wages, hours, and other terms and conditions of employment of the unit and are mandatory subjects for the purposes of collective bargaining. The Respondent closed down its Brooklyn facility without prior notice to the Union and without affording the Union an opportunity to bargain with the Respondent concerning the effects on unit employees of the closing of its Brooklyn facility.

CONCLUSION OF LAW

By the acts and conduct described above, the Respondent has failed and refused to bargain collectively with the Union concerning the effects on unit employees of the closing of its Brooklyn facility and has thereby engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondent has engaged in certain unfair labor practices, we shall order it to cease and desist and to take certain affirmative action designed to effectuate the policies of the Act.

Specifically, we shall order the Respondent, on request, to bargain with the Union over the effects on unit employees of the decision to cease its operations at its Brooklyn, New York facility. To ensure that meaningful bargaining occurs and to effectuate the policies of the Act, we shall accompany our Order with a limited backpay requirement designed both to make whole the employees for losses suffered as a result of the violations and to recreate in some practicable manner a situation in which the parties' bargaining position is not entirely devoid of economic consequences for the Respondent. We shall do so by ordering the Respondent to pay backpay to the unit employees in a manner similar to that required in *Transmarine Corp*., 170 NLRB 389 (1968).

Thus, the Respondent shall pay the employees in the unit backpay at the rate of their normal wages when last in the Respondent's employ from 5 days after the date of this Decision and Order until the occurrence of the earliest of the following conditions: (1) the date the Respondent bargains to agreement with the Union on those subjects pertaining to the effects on its employees of the cessation of the Respondent's Brooklyn operations; (2) a bona fide impasse in bargaining; (3) the failure of the Union to request bargaining within 5 days of this Decision and Order, or to commence negotiations within 5 days of the Respondent's notice of its desire to bargain with the Union; or (4) the subsequent failure of the Union to bargain in good faith; but in no event shall the sum paid to any of these employees exceed the amount which the employees would have earned as wages from the date on which the Respondent ceased the operations to the time they secured equivalent employment elsewhere, or the date on which the Respondent shall have offered to bargain, whichever occurs sooner; provided, however, that in no event shall this sum be less than these employees would have earned for a 2-week period at the rate of their normal wages when last in the Respondent's employ. Backpay shall be based on earnings that the employees would normally have received during the applicable period, less any net interim earnings and shall be computed in accordance with *F. W. Woolworth Co*., 90 NLRB 289 (1950), with interest as prescribed in *New Horizons for the Retarded*, 283 NLRB 1173 (1987).

Finally, in view of the fact that the Respondent has closed its Brooklyn facility, we shall order the Respondent to mail a copy of the attached notice to the Union and to the last known address of its former Brooklyn facility employees in order to inform them of the outcome of this proceeding.

ORDER

The National Labor Relations Board orders that the Respondent, Fashion Rama Knitwear, Ltd., Brooklyn and New Windsor, New York, its officers, agents, successors, and assigns, shall

1. Cease and desist from

(a) Failing and refusing to bargain concerning the effects on unit employees of the closing of its Brooklyn, New York facility, without prior notice to United Production Workers, Local 17-18 (the Union) and without affording the Union an opportunity to bargain concerning the effects of such closing. The bargaining unit consists of:

> All production, maintenance, shipping and delivery employees employed by members of the Association, including the Respondent, but excluding all office clerical employees, guards, professional employees and supervisors as defined in the Act.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action necessary to effectuate the policies of the Act.

(a) On request, bargain with the Union over the effects on unit employees of its closing of its Brooklyn facility, and reduce to writing any agreement reached as a result of such bargaining.

(b) Pay limited backpay to the unit employees in the manner set forth in the remedy section of this decision.

(c) Preserve and, within 14 days of a request, make available to the Board or its agents for examination and copying, all payroll records, social security payment records, timecards, personnel records and reports, and all other records necessary to analyze the amount of backpay due under the terms of this Order.

(d) Within 14 days after service by the Region, post at its New Windsor, New York facility copies of the attached notice marked ''Appendix.''[2] Copies of the notice, on forms provided by the Regional Director for Region 29, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. The Respondent shall also duplicate and mail, at its own expense, a copy of the notice to all former employees employed by the Respondent at its Brooklyn facility at the time the facility was closed.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. November 12, 1996

Margaret A. Browning, Member

Sarah M. Fox, Member

John E. Higgins Jr., Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

[2] If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading ''Posted by Order of the National Labor Relations Board'' shall read ''Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board.''

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with United Production Workers, Local 17-18 (the Union) about the effects on unit employees of our decision to cease operations at our Brooklyn, New York facility. The bargaining unit consists of:

> All production, maintenance, shipping and delivery employees employed by members of the Association, including us, but excluding all office clerical employees, guards, professional employees and supervisors as defined in the Act.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union over the effects on unit employees of the cessation of our operations, and put in writing any agreement reached as a result of such bargaining.

WE WILL pay limited backpay to the unit employees, with interest.

FASHION RAMA KNITWEAR, LTD.